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Federal Communications Commission
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Amendment to the Commission's Rules
Regarding a Plan for Sharing
the Costs of Microwave Relocation

WT Docket No. 95-157
RM-8643

REPLY OF UTAM, INC.

UTAM, Inc. hereby submits its Reply to the Petitions for Reconsideration filed in the above-captioned docket.¹ As the frequency coordinator for unlicensed personal communications services ("UPCS"), UTAM's primary responsibility is to relocate microwave incumbents from the unlicensed spectrum. Since UTAM must raise the funds to relocate incumbents from fees on each UPCS product sold, it is critical that incumbents not be allowed to collect reimbursement for more than the cost of a comparable system. Any unwarranted payments incumbents receive will be directly reflected in the cost of UPCS devices to the public.

In its decision to allow microwave incumbents to self-relocate, the Commission established a number of safeguards to prevent abuse of this process. These safeguards included limiting self-relocation to incumbents who are forced to relocate as a result of PCS deployment, ensuring that incumbents pay a portion of their relocation costs through the depreciation mechanism, and requiring self-relocating incumbents to build a new system.²

¹ Three petitions for reconsideration were filed in response to the Commission's Second Report and Order, WT Docket No. 95-157 (rel. Feb. 27, 1997) ("Order").

² Order, ¶¶ 25-28.

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UTC, the American Petroleum Institute, and the South Carolina Public Service Authority have requested that the Commission weaken these protections by allowing any incumbent who self-relocated after April 5, 1995 to collect reimbursement, not applying the depreciation formula to self-relocating incumbents, and permitting self-relocating incumbents to purchase leased services in place of constructing a new system.³ In their comments, UTC and the Southern Company supported these proposals.⁴

As UTAM, PCIA, and Pacific Bell Mobile Services explained in their oppositions, the safeguards adopted by the Commission are crucial to preventing abuse of the self-relocation process.⁵ Self-relocating incumbents will not take part in negotiations with PCS providers. Thus, the Commission's safeguards must act as a substitute for these negotiations and provide incentives for incumbents to minimize relocation expenses to the cost of a comparable system. Neither the petitioners nor the commenters have been able to explain how abuse of the self-relocation process will be prevented if these protections are removed.

³ Petition for Reconsideration and Clarification of the American Petroleum Institute, WT Docket No. 95-157 (filed Apr. 16, 1997); Petition for Reconsideration and/or Clarification of South Carolina Public Service Authority, WT Docket No. 95-157 (filed Apr. 17, 1997); and Petition for Reconsideration/Clarification of UTC, The Telecommunications Association, WT Docket No. 95-157 (filed Apr. 17, 1997).

⁴ Comments of UTC on Petitions for Reconsideration/Clarification, WT Docket No. 95-157 (filed May 20, 1997) ("UTC Comments"); Comments of Southern Company in Support of the Petitions for Reconsideration, WT Docket No. 95-157 (filed May 20, 1997) ("Southern Company Comments").

⁵ Opposition of UTAM, Inc., WT Docket No. 95-157 (filed May 20, 1997); Opposition of the Personal Communications Industry Association, WT Docket No. 95-157 (filed May 20, 1997); Opposition of Pacific Bell Mobile Services, WT Docket No. 95-157 (filed May 20, 1997).

Incumbents who self-relocated prior to adoption of the Commission's Order have done so for independent business reasons. Although Southern Company alleges that they were forced to self-relocate several links because of PCS licensees relocation efforts,⁶ this scenario is not consistent with the Commission's rules. First, no incumbent was even required to negotiate with PCS providers, much less relocate a link, during the voluntary negotiation period for PCS licensees which ended April 5, 1997. Second, since the Commission's Rules require that PCS relocators provide incumbents with a comparable system, Southern Company would never be obligated to agree to a relocation which would leave some of its links "inoperable." If the Commission changes its rules so that all incumbents who have self-relocated since April 5, 1995 are entitled to reimbursement, incumbents who self-relocated for reasons unrelated to the deployment of PCS will receive a windfall, and UTAM will have to raise additional fees to fund the clearing of the unlicensed band.

In addition, no party has explained what mechanism would replace requiring incumbents to pay some portion of their relocation costs through the depreciation formula as an incentive to minimize costs. In its Order, the Commission stressed the role depreciation would play in encouraging incumbents to control relocation costs.⁷ Although incumbents have noted the other incentives they will have to minimize costs, such as the third party appraisal, UTAM has explained that none will be as effective as requiring self-relocating incumbents to pay at least a small portion of the costs themselves. Moreover, paying these costs will only

⁶ Southern Company Comments at 3.

⁷ Order, ¶ 27.

ensure that an incumbent does not waste resources, rather than ensuring that it builds a comparable system.

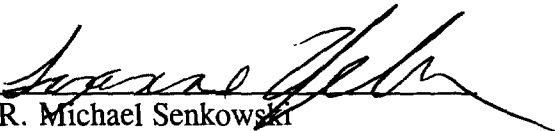
In its comments, UTC states that it agrees that self-relocating incumbents should not be limited to building a new system to receive reimbursement.⁸ UTAM supports the use of different facilities and services to accommodate relocated incumbents. However, UTAM is concerned that if self-relocating incumbents are allowed to lease facilities in place of building a new system, the third-party appraisal required by the Commission will not be as accurate as if a new system were built. In particular, UTAM fears that an appraisal based solely on an estimate of relocation costs, rather than the actual costs of a new system, would not reflect all potential savings that would be realized if a new system were built. The use of alternative facilities and services is best left to negotiations between incumbents and PCS providers who have an incentive to minimize costs.

⁸ UTC Comments at 6-7.

UTAM's goal is to raise sufficient funds to clear the unlicensed spectrum and facilitate the deployment of all types of unlicensed devices. It is crucial that relocation costs be kept at a minimum for UTAM to succeed. Therefore, for the foregoing reasons, UTAM urges the Commission to maintain its safeguards to prevent abuse of the self-relocation mechanism.

Respectfully submitted,

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May 30, 1997

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